

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**UNITED STATES OF AMERICA,**

Plaintiff,

**-vs-**

**Case No. 16-C-487  
(Criminal Case No. 11-Cr-281)**

**TYRONE MCMILLIAN, JR.,**

Movant.

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**DECISION AND ORDER**

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Pro se Movant Tyrone McMillian has filed a motion and supporting memorandum to proceed without prepayment of the filing fee on his motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct sentence and a supporting memorandum. (ECF Nos. 1, 3.) There is no filing fee for a § 2255 motion. *See* Rule 3 of the Rules Governing § 2255 Proceedings for the District Courts, Advisory Comm. Notes, 1976 Adoption. Therefore, McMillian's request to proceed without prepayment of the filing fee is denied as moot.

The Court is required to conduct preliminary review of McMillian's motion, and upon review, it does not plainly appear that he is not entitled to relief. *See* R. 4 Governing § 2255 Proceedings Dist. Cts. Therefore, Plaintiff United States of America will be required to file an answer to the

instant motion, which must conform with the requirements of Rule 5 of the Rules Governing § 2255 Proceedings for the District Courts. Because the motion includes allegations of ineffective assistance of trial counsel, the Court will direct the Clerk of Court to send a copy of this Order to McMillian's district court attorneys and afford them an opportunity to respond.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:**

McMillian's request to proceed without prepayment of the filing fee (ECF No. 3) is **DENIED** as moot;

**On or before July 14, 2016**, the Plaintiff **MUST FILE** an answer to the instant motion;

The Clerk of Court is **DIRECTED** to serve a copy of this Order upon defense counsel who represented McMillian before this Court;

Defense counsel may file a response to the motion **on or before August 14, 2016**; and

Any reply **MUST BE FILED** by McMillian and/or the Plaintiff **on or before September 30, 2016**.

Dated at Milwaukee, Wisconsin, this 13th day of May, 2016.

**BY THE COURT:**

  
**HON. RUDOLPH T. RANDA**  
**U.S. District Judge**